

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<div>----- X</div> <div><b>AMERICAN INSURANCE COMPANY</b> <b>a/s/o Mariah Carey, and Sinclair C.S.</b> <b>Beecham</b></div> <div><b>Plaintiffs,</b> <b>against</b></div> <div><b>CORN ASSOCIATES, LLC, THE</b> <b>FRANKLIN TOWER CONDOMINIUM,</b> <b>KATZ METAL FABRICATORS, INC., and</b> <b>SAMCO PLUMBING, INC.,</b> <b>Defendants.</b></div> <div>----- X</div>	<div><b>Docket No.: 1:07 cv 08604</b></div> <div><b>OPPOSITION AFFIDAVIT OF</b> <b>MARK E. OPALISKY</b></div>
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MARK E. OPALISKY, an attorney admitted *pro hac vice* to practice before this Court, being duly sworn, deposes and says:

1. I am counsel for plaintiff, AMERICAN INSURANCE COMPANY, subrogee of Mariah Carey and Sinclair C.S. Beecham. This Affidavit, Counter Statement of Facts and accompanying Memorandum of Law are made in opposition to the Motion for Summary Judgment of the Franklin Tower Condominium.

2. As grounds for its Motion for Summary Judgment, Franklin Tower argues that American Insurance Company is barred from bringing this subrogation action against defendant because policyholders Mariah Carey and Sinclair C.S. Beecham waived plaintiff's right to subrogation.

3. Franklin Tower Condominium relies on the Condominium Documents which consist of the Declaration, the Condominium Offering and the By-Laws, copies of which were

attached to defendant's Motion for Summary Judgment. For the Court's convenience, plaintiff attaches to this Affidavit selected pages from the extensive Condominium Documents.

4. Attached hereto as Exhibit A are pages 40 through 42; attached as Exhibit B is page 10; attached as Exhibit C are pages 101-102; and attached as Exhibit D are pages 344-345.

5. For the reasons set forth in plaintiff's Memorandum of Law, defendant Franklin Tower Condominium has not proved the absence of material fact with regard to the intent of the parties to waive subrogation. It is plaintiff's position that Summary Judgment should not be granted.

WHEREFORE, it is respectfully requested that this Court deny the Motion for Summary Judgment of the Franklin Tower Condominium.

  
Mark E. Opalisky

Sworn to before me this  
16<sup>th</sup> day of July, 2008